

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSEPH DEONN. HORNE,

No. C 07-4592 SBA (PR)

Petitioner,

**ORDER GRANTING IN FORMA  
PAUPERIS STATUS AND DIRECTING  
RESPONDENT TO SHOW CAUSE WHY  
THE PETITION SHOULD NOT BE  
GRANTED**

v.

ROBERT HOREL, Warden,

Respondent.

(Docket nos. 2, 10)

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner also seeks leave to proceed in forma pauperis. It does not appear from the face of the petition that it is without merit.

On February 28, 2008, Petitioner filed a notice of appeal and a motion for a certificate of appealability (COA). Unless a circuit justice or judge issues a COA, an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court. 28 U.S.C. § 2253(c)(1). Petitioner states that he is attempting to appeal "the non-judgment of the District Court Hon. Judge Sandra Brown Armstrong refusing to or just simply not responding to [the] above entitled federal writ of habeas corpus case." Petitioner is not appealing a final order by the Court. Accordingly, his application for a COA is DENIED. Further, Petitioner's attempt to appeal does not deprive this Court of jurisdiction to enter its order in the case.

Good cause appearing, the Court hereby issues the following orders:

1. Petitioner's application to proceed in forma pauperis (docket no. 2) is GRANTED.
2. The Clerk of the Court shall serve a copy of this Order and the petition and all attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this Order on Petitioner at his current address.
3. Respondent shall file with this Court and serve upon Petitioner, within **one-hundred and twenty (120) days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not

1 be issued. Respondent shall file with the Answer a copy of all portions of the relevant state records  
2 that have been transcribed previously and that are relevant to a determination of the issues presented  
3 by the petition.

4 4. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with  
5 the Court and serving it on Respondent within **sixty (60) days** of his receipt of the Answer. Should  
6 Petitioner fail to do so, the petition will be deemed submitted and ready for decision **sixty (60) days**  
7 after the date Petitioner is served with Respondent's Answer.

8 5. Respondent may file a motion to dismiss on procedural grounds in lieu of an Answer,  
9 as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.  
10 If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an  
11 opposition or statement of non-opposition to the motion within **sixty (60) days** of receipt of the  
12 motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen (15)**  
13 **days** of receipt of any opposition.

14 6. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court  
15 and Respondent informed of any change of address and must comply with the Court's orders in a  
16 timely fashion. Petitioner must also serve on Respondent's counsel all communications with the  
17 Court by mailing a true copy of the document to Respondent's counsel.

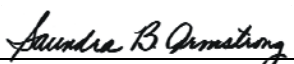
18 7. Extensions of time are not favored, though reasonable extensions will be granted.  
19 Any motion for an extension of time must be filed no later than **ten (10) days** prior to the deadline  
20 sought to be extended.

21 8. Petitioner's application for a COA (docket no. 10) is DENIED. The Clerk of the  
22 Court shall transmit the file, including a copy of this Order, to the Court of Appeals. See Fed. R.  
23 App. P. 22(b); United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

24 9. This Order terminates Docket nos. 2 and 10.

25 IT IS SO ORDERED.

26 DATED: 3/20/08

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 JOSEPH D. HORNE,  
5 Plaintiff,

Case Number: CV07-04592 SBA

**CERTIFICATE OF SERVICE**

6 v.

7 ROBERT HOREL et al,  
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on March 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Joseph Deonn Horne V-84328  
16 Kern Valley State Prison  
17 P.O. Box 5102  
18 Delano, CA 93216

19 Dated: March 24, 2008

20 Richard W. Wieking, Clerk  
21 By: LISA R CLARK, Deputy Clerk  
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